

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DANIEL JAGER,

Defendant-Appellant.

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UNPUBLISHED

July 14, 1998

No. 201746

Muskegon Circuit Court

LC No. 96-139920 FC

Before: Murphy, P.J., and Young, Jr. and M. R. Smith\*, JJ.

MEMORANDUM.

Defendant appeals as of right his guilty plea based conviction for assault with intent to rob while armed, MCL 750.89; MSA 28.284, and habitual offender, third offense, MCL 769.11; MSA 28.1083. We affirm.

The charges against defendant arose out of the vicious beating of a truckdriver at a rest area in the commission of a robbery. Defendant struck the victim repeatedly with a screwdriver, while his codefendant struck him with a wrench. Blood was spattered throughout the truck, and the victim sustained multiple stab wounds and fractures.

The sentencing guidelines range was 120 to 300 months or life. The trial court noted that the codefendant had the benefit of a sentencing agreement, while defendant did not. The court observed that it would treat defendant similarly, due to the fact that he had not committed any new crime in the 4-½ years since the assault, and the victim had not suffered permanent injury. The court found that defendant had the same culpability as the codefendant, and sentenced him as a habitual offender to 20 to 50 years' imprisonment, with credit for 121 days for time served.

On appeal, defendant argues that the trial court abused its discretion in imposing the same sentence on defendant that it imposed on the more culpable codefendant. We disagree.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

This Court will review a sentence on a habitual offender conviction for abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 324; 562 NW2d 460 (1997). A sentence

must be individualized to the particular circumstances of the case and to the offender. *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973). The fact that the court imposed the same sentences on two defendants does not establish that defendant's sentence was not sufficiently individualized. Where the court sentenced defendant within the codefendant's plea negotiated sentence cap, even though defendant did not have the benefit of a sentence agreement, defendant received a tangible benefit by the court's comparison with the codefendant. The court specifically compared the circumstances of the two offenders, and imposed the same sentences based on a finding that they were equally culpable for the crime. There is no showing that the trial court abused its discretion in imposing sentence on defendant.

Affirmed.

/s/ William B. Murphy  
/s/ Robert P. Young, Jr.  
/s/ Michael R. Smith